

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY - CIVIL DIVISION
DOCKET NO. 02389

GEOFFREY CROWTHER,
Plaintiff,

Vs.

CONSOLIDATED RAIL CORPORATION
and CSX TRANSPORTATION, INC.,
Defendants.

DEPOSITION OF STEVEN M. WENNER, M.D.

New England Orthopedic Surgeons
300 Birnie Avenue
Springfield, Massachusetts

December 15, 2008 5:25 p.m.

Jonathan P. Lodi
Court Reporter

<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 Representing the Plaintiff:</p> <p>4 LAW OFFICE OF THOMAS J. JOYCE, III</p> <p>5 900 Centerton Road</p> <p>6 Mount Laurel, New Jersey 08054</p> <p>7 By: Thomas J. Joyce, III, Esq.</p> <p>8 856.914.0220</p> <p>9</p> <p>10 Representing the Defendants:</p> <p>11 BURNS, WHITE & HICKTON, LLC</p> <p>12 Four Northshore Center</p> <p>13 106 Isabella Street</p> <p>14 Pittsburgh, PA 15212</p> <p>15 By: Stephen A. Hall, Esq.</p> <p>16 412.995.3000</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p style="text-align: right;">Page 4</p> <p>STEVEN M. WENNER, M.D., Deponent, having first been duly sworn, deposes and states as follows:</p> <p>(Wenner Deposition Exhibits 1 and 2: Marked for identification.)</p> <p>EXAMINATION</p> <p>Q. (By Mr. Hall) Hi, Dr. Wenner. My name is Steve Hall, and I represent the Railroad in a piece of litigation involving a former patient of yours, Geoffrey Crowther. And I've marked, as Exhibit 1, your deposition notice. And I sent this through to Mr. Joyce, because he designated you as an expert in this case, okay?</p> <p>A. Okay.</p> <p>Q. And I'd asked that you bring in all your file materials with you, with regard to Mr. Crowther. Have you done that?</p> <p>A. I think I have.</p> <p>Q. And is that the stack of papers that you have in front of you?</p> <p>A. Yes.</p> <p>Q. And are these the electronic records that are kept by New England?</p> <p>A. Yes, they are.</p> <p>Q. And is it okay if I mark these as an</p>
<p style="text-align: right;">Page 3</p> <p>1 I N D E X</p> <p>2</p> <p>3 WITNESS: STEVEN M. WENNER, M.D.</p> <p>4 EXAMINATION BY: PAGE:</p> <p>5 Mr. Hall 4</p> <p>6 Mr. Joyce 55</p> <p>7 Mr. Hall 56</p> <p>8</p> <p>9 EXHIBITS: PAGE:</p> <p>10 1 Notice of deposition 4</p> <p>11 2 Dr. Wenner's report and CV 4</p> <p>12 3 Addendum report dated 11/30/08 5</p> <p>13 4 Letter dated 4/11/08 from Mr. Joyce 14</p> <p>14 to Dr. Wenner</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p style="text-align: right;">Page 5</p> <p>exhibit?</p> <p>A. Yes. Actually, one of them is a paper that you gave me, because I didn't have that last copy there, that paper.</p> <p>(Wenner Deposition Exhibit 3: Marked for identification.)</p> <p>Q. (By Mr. Hall) Okay. And the paper that you're referring to was the addendum report dated November 30th, 2008, is that correct?</p> <p>A. Correct.</p> <p>Q. And I've also marked as Exhibit 2, before you got here, a copy of your report, which actually includes that addendum as well. And it also has your CV that I have.</p> <p>Could you look at that; and is that a fair and accurate copy of your report, the addendum, as well as your CV?</p> <p>A. It is a fair and accurate copy of that. It looks correct to me.</p> <p>Q. Okay. And one of things I noticed is that your report and your addendum weren't signed.</p> <p>Do you have a signed copy or --</p> <p>A. I don't, myself, have a signed copy, no.</p>

<p style="text-align: right;">Page 6</p> <p>1 Q. Do you know if a signed copy exists?</p> <p>2 A. I might have sent a signed copy to</p> <p>3 Attorney Joyce, if you're the person who asked me</p> <p>4 for this. But I don't recall, myself.</p> <p>5 MR. JOYCE: And I don't think I've</p> <p>6 seen a signed copy. Maybe we could have you</p> <p>7 sign one right here, because that's</p> <p>8 something we want to do.</p> <p>9 THE WITNESS: That's fine with me.</p> <p>10 MR. HALL: Okay. And I'm not trying</p> <p>11 to be difficult. I was just -- because one</p> <p>12 of the things that was consistent with Dr.</p> <p>13 Lehman's report is that, you know, you're</p> <p>14 signing and swearing to it under the pains</p> <p>15 and penalties of perjury.</p> <p>16 THE WITNESS: Yes.</p> <p>17 Q. (By Mr. Hall) I mean, is that the</p> <p>18 nature in which you -- when you drafted your</p> <p>19 report, that was your intention, to sign it and</p> <p>20 execute it?</p> <p>21 A. It was my intent to dictate a report</p> <p>22 that was honest and accurate.</p> <p>23 Q. So are there any changes to your</p> <p>24 report or to your addendum?</p>	<p style="text-align: right;">Page 8</p> <p>years in orthopedic surgery, and one year in</p> <p>surgery of the hand. I entered practice in July</p> <p>of 1980 doing orthopedic surgery and surgery of</p> <p>the hand. About ten or twelve years later, I</p> <p>limited myself only to surgery of the hand,</p> <p>exclusively to surgery of the hand, and have</p> <p>continued to do that since that time.</p> <p>Q. And are you board certified?</p> <p>A. I am.</p> <p>Q. And is that in orthopedic surgery?</p> <p>A. It's in orthopedic surgery. And I</p> <p>have what's called a certificate of added</p> <p>qualifications in hand surgery.</p> <p>Q. And have you conducted any research or</p> <p>written any papers?</p> <p>A. I have.</p> <p>Q. And do any of those relate to</p> <p>repetitive stress injuries?</p> <p>A. They do not.</p> <p>Q. Anything that deals with railroad</p> <p>work?</p> <p>A. No.</p> <p>Q. And have you been an expert witness in</p> <p>the past, sir?</p>
<p style="text-align: right;">Page 7</p> <p>1 A. No.</p> <p>2 Q. So you're okay with it as it's</p> <p>3 written?</p> <p>4 A. I am. Well, there are a couple of</p> <p>5 typos. But other than that, there's nothing</p> <p>6 important.</p> <p>7 Q. Okay. And in looking at that -- well,</p> <p>8 let me back up.</p> <p>9 Can you tell me a little bit about</p> <p>10 your background? Where are you licensed to</p> <p>11 practice medicine?</p> <p>12 A. Massachusetts.</p> <p>13 Q. Any other states?</p> <p>14 A. No, none active.</p> <p>15 Q. And have you been subject to</p> <p>16 discipline at any time?</p> <p>17 A. I have not.</p> <p>18 Q. And do you have a specialty or --</p> <p>19 well, can you give me a brief overview of your</p> <p>20 educational background?</p> <p>21 A. Yes. I went to Yale College for my</p> <p>22 undergraduate degree. I graduated from Jefferson</p> <p>23 Medical College in Philadelphia in 1974. I</p> <p>24 trained for two years in general surgery, three</p>	<p style="text-align: right;">Page 9</p> <p>A. I have.</p> <p>Q. And can you tell me the types of</p> <p>cases?</p> <p>A. All upper limb; elbow, wrist, hand.</p> <p>Q. And were those personal injuries?</p> <p>A. They were -- yes, I think so.</p> <p>Q. And were you hired or retained by the</p> <p>plaintiff or by the defendant?</p> <p>A. I was hired by the defendant, I think,</p> <p>in all of the cases. But there may be one</p> <p>exception to that.</p> <p>Q. And have you been retained by a</p> <p>particular defendant or by a variety of different</p> <p>defendants or --</p> <p>A. No. I don't think any defendant has</p> <p>hired me, retained me repeatedly.</p> <p>Q. And were these Workers' Compensation</p> <p>cases or --</p> <p>A. I think they were largely medical</p> <p>malpractice cases.</p> <p>Q. And have you ever testified in court?</p> <p>A. I have.</p> <p>Q. And where have you testified?</p> <p>A. In Springfield.</p>

<p style="text-align: right;">Page 10</p> <p>1 Q. And in state court or Federal court?</p> <p>2 A. I don't know.</p> <p>3 Q. And was that in a medical malpractice</p> <p>4 case?</p> <p>5 A. I think that they -- I don't think</p> <p>6 they were medical malpractice cases. I think once</p> <p>7 or twice, for personal injuries, as an expert.</p> <p>8 Q. And do you recall the outcome of the</p> <p>9 cases in which you testified?</p> <p>10 A. I don't.</p> <p>11 Q. Do you have any connection with the</p> <p>12 railroad industry?</p> <p>13 A. I don't.</p> <p>14 Q. Family, friends, anyone else?</p> <p>15 A. I took the train to New York last</p> <p>16 Friday. Other than that, that's it.</p> <p>17 Q. And it's my understanding that you</p> <p>18 authored a report dated November 11th and an</p> <p>19 addendum dated November 30th?</p> <p>20 A. Correct.</p> <p>21 Q. And were you paid by Mr. Joyce's</p> <p>22 office in that record?</p> <p>23 A. I believe I was.</p> <p>24 Q. And one of the things that I saw with</p>	<p style="text-align: right;">Page 12</p> <p>Q. Can you tell me what you reviewed to</p> <p>come to your opinions that are contained in your</p> <p>report; can you tell me the things that you might</p> <p>have reviewed?</p> <p>A. I would have reviewed my own office</p> <p>notes about my care of Mr. Crowther and notes of</p> <p>our physician assistants that pertained to his</p> <p>care.</p> <p>Q. Was there anything else that you might</p> <p>have reviewed?</p> <p>A. I don't think so.</p> <p>Q. And did you rely on any particular</p> <p>literature in coming to your opinions?</p> <p>A. No.</p> <p>Q. And it's my understanding that you</p> <p>basically, on the second page or, I'm sorry, on</p> <p>the third page of your November 11th letter/</p> <p>report --</p> <p>A. Yes.</p> <p>Q. -- it indicates, with respect to your</p> <p>questions about whether or not his left thumb</p> <p>problem is attributable to a specific injury, "I</p> <p>do not believe that it is"; with respect to the</p> <p>question whether his left thumb arthritis is a</p>
<p style="text-align: right;">Page 11</p> <p>1 Dr. Lehman was a letter from Attorney Joyce.</p> <p>2 Did you receive a similar letter?</p> <p>3 A. Well, I don't know what Dr. Lehman</p> <p>4 received, so I can't tell you.</p> <p>5 Q. Okay. I can show you what has been</p> <p>6 marked as Lehman Exhibit 5, which is a letter from</p> <p>7 Mr. Joyce's office asking for a narrative.</p> <p>8 A. I don't remember if I received a</p> <p>9 letter that was just like this or not. Normally</p> <p>10 we don't dictate reports unless we have a letter</p> <p>11 and a payment.</p> <p>12 Q. And how much is that payment; is that</p> <p>13 the \$550?</p> <p>14 A. I think it was.</p> <p>15 Q. And do you --</p> <p>16 MR. JOYCE: Do you want a copy of the</p> <p>17 letter, Steve?</p> <p>18 MR. HALL: Please. That would be</p> <p>19 great. Thanks. And we'll mark this as an</p> <p>20 exhibit. We can mark it at the end.</p> <p>21 Q. (By Mr. Hall) And your report and</p> <p>22 your addendum, do they contain all of your</p> <p>23 opinions?</p> <p>24 A. I think so.</p>	<p style="text-align: right;">Page 13</p> <p>result of what he does at work, "I cannot state</p> <p>whether it is or isn't."</p> <p>Basically, my understanding is that</p> <p>you don't have an opinion, within a reasonable</p> <p>degree of medical certainty, as to whether or not</p> <p>his job duties caused his left thumb arthritis, is</p> <p>that correct?</p> <p>A. Caused as the primary event; you don't</p> <p>mean aggravated?</p> <p>Q. No. I mean caused as a primary event.</p> <p>A. I can't say for sure.</p> <p>Q. And you can't say within a reasonable</p> <p>degree of medical certainty, correct?</p> <p>A. Yes.</p> <p>Q. And in the addendum report -- well,</p> <p>let me ask you this: Did you send off this letter</p> <p>to Mr. Joyce's office?</p> <p>A. I did.</p> <p>Q. And then were you contacted later to</p> <p>write an addendum report?</p> <p>A. Well, I was asked if I was willing to.</p> <p>Q. Okay. And what do you mean by that?</p> <p>A. Well, I wasn't told to write one.</p> <p>Q. Oh, I'm sorry. You're right.</p>

<p style="text-align: right;">Page 14</p> <p>1 A. I was asked if, in my opinion -- I</p> <p>2 guess I would have to see what I was asked in the</p> <p>3 letter, and then see if that would help me to know</p> <p>4 how to answer your question.</p> <p>5 MR. HALL: Okay. And I guess we'll</p> <p>6 mark it now as Wenner Exhibit 4.</p> <p>7 (Wenner Deposition Exhibit 4: Marked</p> <p>8 for identification.)</p> <p>9 MR. HALL: I hand you a copy of what</p> <p>10 has been marked as Exhibit 4 and is Mr.</p> <p>11 Joyce's letter to you.</p> <p>12 THE WITNESS: Yes.</p> <p>13 Q. (By Mr. Hall) And can you explain to</p> <p>14 me how you came to come to the addendum report</p> <p>15 dated November 30th, 2008 after reviewing that</p> <p>16 letter?</p> <p>17 A. Well, I can't tell based upon this</p> <p>18 letter.</p> <p>19 Q. Do you recall whether or not you saw</p> <p>20 or received another communication from Mr. Joyce's</p> <p>21 office about an addendum?</p> <p>22 A. I think that I did.</p> <p>23 Q. And do you have a copy of that letter</p> <p>24 or was it a phone call or --</p>	<p style="text-align: right;">Page 16</p> <p>caused, contributed to, and aggravated by</p> <p>his work at the Railroad. And my -- Page 3,</p> <p>last paragraph of my initial report, I don't</p> <p>refer to aggravated, I don't believe.</p> <p>MR. HALL: Okay.</p> <p>THE WITNESS: So I assume that I was</p> <p>referring to that in the addendum.</p> <p>Q. (By Mr. Hall) Okay. And -- but you</p> <p>recall there being a subsequent communication</p> <p>after --</p> <p>A. Yes. I would not have just sent that</p> <p>on my own.</p> <p>Q. And that addendum essentially is that</p> <p>-- well, let me ask you this: When you saw that</p> <p>he aggravated the arthritis of the metacarpal</p> <p>phalangeal joint of his left thumb, what does that</p> <p>mean?</p> <p>A. Made it biologically worse and made it</p> <p>more symptomatic. Both.</p> <p>Q. And do you have any objective</p> <p>scientific evidence that shows that Mr. Crowther's</p> <p>left thumb joint, that the disease process that</p> <p>existed there was actually made worse by his job</p> <p>duties?</p>
<p style="text-align: right;">Page 15</p> <p>1 A. No. I don't think it would have been</p> <p>2 a phone call, because I normally wouldn't respond</p> <p>3 to that. I assume it was a letter. I don't have</p> <p>4 a copy of it here.</p> <p>5 MR. HALL: Tom, do you have a copy of</p> <p>6 another letter?</p> <p>7 MR. JOYCE: I think we just re-sent</p> <p>8 that. I thought we just re-sent the letter,</p> <p>9 Doctor. I'm not aware of another follow-up</p> <p>10 letter, although that's possible.</p> <p>11 MR. HALL: To the extent one exists,</p> <p>12 can you produce it?</p> <p>13 MR. JOYCE: Yes. I'll send it to you.</p> <p>14 I'm pretty sure we -- that our follow-up</p> <p>15 question was: Thank you for your report;</p> <p>16 and your -- we have another follow-up</p> <p>17 question as to whether or not his job</p> <p>18 aggravated or worsened his osteoarthritis of</p> <p>19 his thumb.</p> <p>20 THE WITNESS: And as -- if it's of</p> <p>21 consequence, as I read this, in the last</p> <p>22 paragraph on the first page of Mr. Joyce's</p> <p>23 letter, it asks, Left thumb injury and</p> <p>24 subsequent left thumb surgery in part</p>	<p style="text-align: right;">Page 17</p> <p>A. I don't.</p> <p>Q. And have you relied on any particular</p> <p>literature in coming to your opinion that there</p> <p>was a biological worsening?</p> <p>A. Well, you know, if you're asking have</p> <p>I relied on a specific article that says that this</p> <p>-- if you do this -- then here's the outcome of</p> <p>it, no. If you're referring to am I familiar with</p> <p>literature that describes the natural biological</p> <p>processes and disease states, their typical</p> <p>evolution, what factors may aggravate them,</p> <p>contribute to their worsening, et cetera, there's</p> <p>a whole body of medical literature about that.</p> <p>You know, that's what we learn in school and in</p> <p>residencies.</p> <p>Q. Is there a leading article that you're</p> <p>aware of?</p> <p>A. If there is, I couldn't quote it to</p> <p>you. Sorry.</p> <p>Q. And fair to say that there's no</p> <p>articles listed in your report, right?</p> <p>A. Correct.</p> <p>Q. And I didn't see any reference that</p> <p>you looked at any particular book, journal, or</p>

<p style="text-align: right;">Page 18</p> <p>1 anything like that, correct?</p> <p>2 A. That's correct.</p> <p>3 Q. And as you sit here today, you can't</p> <p>4 name any of those studies, is that right?</p> <p>5 A. That's correct.</p> <p>6 Q. And were you aware of the type of job</p> <p>7 duties that Mr. Crowther was doing when he</p> <p>8 presented to you for the first time I think in</p> <p>9 September of 2005?</p> <p>10 A. I was aware of them. And it was 2005.</p> <p>11 Q. Okay.</p> <p>12 A. And it looks like it was September.</p> <p>13 Q. Okay. Do you know any specific jobs</p> <p>14 that he was doing at that time that --</p> <p>15 A. Well, I had it -- my understanding was</p> <p>16 that he was working on the Railroad and repairing</p> <p>17 track; repairing, laying, et cetera, track.</p> <p>18 Q. And is that the sum and substance of</p> <p>19 your knowledge of his job duties?</p> <p>20 A. Well, that's the sum and substance of</p> <p>21 what it is now. I've taken care of some number of</p> <p>22 railroad workers over the years, and I've listened</p> <p>23 to what they describe as that type of work, so I</p> <p>24 have a little bit of a sense of it.</p>	<p style="text-align: right;">Page 20</p> <p>about his job, other than what he told you?</p> <p>A. I don't think so.</p> <p>Q. So fair to say you didn't go out and</p> <p>see the type of work that Mr. Crowther did?</p> <p>A. I did not.</p> <p>Q. And you've not seen the videotape of</p> <p>the type of job he did?</p> <p>A. I have not.</p> <p>Q. And I assume that you've not seen any</p> <p>ergonomic assessments of the work he did?</p> <p>A. I have not.</p> <p>Q. And you've not performed any type of</p> <p>scientific analysis of exposure he had on the job,</p> <p>correct?</p> <p>A. Correct.</p> <p>Q. And I guess the same would go for not</p> <p>having done any analysis on the type of rest</p> <p>periods and things like that, or non-work</p> <p>exposures he had?</p> <p>A. Correct.</p> <p>Q. And fair to say you wouldn't know how</p> <p>much time during a given shift that Mr. Crowther</p> <p>might use his hands?</p> <p>A. Correct.</p>
<p style="text-align: right;">Page 19</p> <p>1 Q. Okay. How many --</p> <p>2 A. Jackhammers and sledgehammers and all</p> <p>3 that.</p> <p>4 Q. Okay. How many railroad workers do</p> <p>5 you think you've seen?</p> <p>6 A. Over the years?</p> <p>7 Q. Yes.</p> <p>8 A. Half a dozen maybe.</p> <p>9 Q. In what craft?</p> <p>10 A. Track workers.</p> <p>11 Q. And what problems did they present</p> <p>12 with?</p> <p>13 A. They presented with a variety of</p> <p>14 complaints referable to their hands.</p> <p>15 Q. Any similar to Mr. Crowther's?</p> <p>16 A. I don't recall.</p> <p>17 Q. Is arthritis in the thumb or the joint</p> <p>18 of the thumb, is that a pretty common occurrence?</p> <p>19 A. Well, the joint where he has the</p> <p>20 arthritis is not the commonest occurrence. There</p> <p>21 is one joint in the thumb that's commonly</p> <p>22 afflicted with arthritis, but it's not this joint,</p> <p>23 not the joint that was involved for him.</p> <p>24 Q. And have you reviewed any information</p>	<p style="text-align: right;">Page 21</p> <p>Q. Or the way in which he would</p> <p>manipulate tools or use tools, correct?</p> <p>A. Correct.</p> <p>Q. Or on the duration of the use of</p> <p>tools?</p> <p>A. Correct.</p> <p>Q. Or the rest time in between tool</p> <p>usage?</p> <p>A. Correct.</p> <p>Q. And did you consider any of</p> <p>Mr. Crowther's avocational activities in coming to</p> <p>your determination that he had an aggravation of</p> <p>his pre-existing arthritis in his metacarpal</p> <p>phalangeal joint of his left thumb?</p> <p>A. I did not.</p> <p>Q. What are the risk factors for the</p> <p>development of arthritis in the metacarpal</p> <p>phalangeal joint of the left thumb?</p> <p>A. Injury to the ligaments that stabilize</p> <p>the joint. If you injure the ligaments, then</p> <p>there's a chance that you will make the joint</p> <p>mechanically unsound. And it may become arthritic</p> <p>as a consequence of that. A direct injury to the</p> <p>cartilage of that joint, such as might occur from</p>

<p style="text-align: right;">Page 22</p> <p>1 -- the conventional term would be jamming it, but 2 it's more severe than just a jamming injury, of 3 course. A fracture of that joint could make it 4 become arthritic. And it could be arthritic as a 5 result of a disease state throughout the body, if 6 you had an arthritic disease that was affecting 7 multiple parts of the body. 8 Q. Okay. How about just age? 9 A. Age contributes to it. But again, 10 this tends not to be the joint of the thumb that's 11 affected with arthritis just as a consequence of 12 age. 13 Q. Any other risk factors? Smoking, 14 tobacco use, anything like that? 15 A. I don't think so. 16 Q. Have you ruled out each of these risk 17 factors with regard to Mr. Crowther? 18 A. Well, he had some evidence of having 19 had a chronic ligament injury to the thumb, so 20 that's not ruled out; that's probably ruled in. 21 That was the first one I gave you. I do not think 22 that he had any evidence of having had a fracture 23 of it. I imagine, in my own mind, that repetitive 24 heavy use of it, using sledgehammers and</p>	<p style="text-align: right;">Page 24</p> <p>over a period of years from sustained heavy use of it in the face of that. Q. But it's still your opinion that you can't say whether or not work caused that? A. A ligament -- whether it caused a ligament injury? Q. Or the arthritis. A. Correct. Q. And you'd agree with me that you're not an occupational medicine doctor, are you? A. I am not. Q. And you're aware of that specialty? A. I am. Q. And you would agree, sir, that you're a treating physician; that means that you basically see patients, spend your days with patients and perform surgery, is that correct? A. That's correct. Q. And that you don't routinely examine workers to determine if their work caused a problem they might be having, would you agree? A. I'm not sure I understood the question. Q. That you don't routinely examine</p>
<p style="text-align: right;">Page 23</p> <p>1 jackhammers and, you know, carrying heavy railroad 2 tie, all of which I imagined that he did for many 3 years, using heavy tools, would probably result, 4 like it does for most people who are doing heavy 5 mechanical work, in a number of dings to the 6 joints of their hands. Workers get that all the 7 time, workers in a variety of pursuits. So when I 8 say, "dings," I mean jamming-type injuries, but 9 bad jamming injuries. And I don't think he had an 10 arthritic disease throughout his entire body. 11 Q. Well, he is polyarthritic. You're 12 aware of that? 13 A. Well, he's polyarthritic, but I don't 14 think it's an inflammatory arthropathy. 15 Q. Did you do anything to rule that out? 16 A. No. 17 Q. And it's my understanding that you 18 stated in that paragraph that, with respect to 19 your question as to whether or not his thumb 20 problem is attributable to his specific injury, "I 21 don't believe that it is." And would that also 22 include the chronic ligament injury to his thumb? 23 A. Well, a chronic ligament injury won't 24 cause arthritis right at that day. It results</p>	<p style="text-align: right;">Page 25</p> <p>workers to determine if their work may have caused a particular problem they were having? A. I'm not sure I would agree with that entirely. I examine people who are injured on the job, a variety of jobs, regularly. And I examine -- and I'm frequently asked the question: Did the particular job that they did cause or result in a problem that they have. Q. And in your practice, do you ordinarily go out and review the job or get more information about jobs? A. I never go out and review the job. And I frequently get written reports about what they do on their job. Q. And did you get a written report of what Mr. Crowther did on his job? A. I don't recall having gotten one. Q. Okay. And it certainly isn't part of your file, is that correct? A. Correct. Q. And so at least in this case, in that minor instance you deviated from your normal practice, would you agree? A. No. I didn't say that was my normal</p>

<p style="text-align: right;">Page 26</p> <p>1 practice.</p> <p>2 Q. I'm sorry. Is it your normal practice</p> <p>3 to try to learn as much as you can about a job</p> <p>4 before you make an opinion within a reasonable</p> <p>5 degree of scientific certainty?</p> <p>6 A. If what you mean by that is do I study</p> <p>7 reports about what somebody does in their job, I</p> <p>8 do it some of the time; I don't do it routinely.</p> <p>9 Q. Okay. You would agree with me that</p> <p>10 more information is better, correct?</p> <p>11 A. I would agree that more information is</p> <p>12 better, correct.</p> <p>13 Q. And that if you're evaluating the</p> <p>14 value of a conclusion or opinion, that might be a</p> <p>15 factor to take into account, would you agree?</p> <p>16 A. I agree.</p> <p>17 Q. And it's my understanding that, in</p> <p>18 looking at the file that you had provided me, that</p> <p>19 you hadn't reviewed any of Mr. Crowther's outside</p> <p>20 medical records, is that correct?</p> <p>21 A. I think that's correct.</p> <p>22 Q. So you haven't seen his railroad</p> <p>23 medical file or his railroad personnel file?</p> <p>24 A. I believe that's correct.</p>	<p style="text-align: right;">Page 28</p> <p>Q. And when he told -- and is that</p> <p>information -- is that -- that's based on what Mr.</p> <p>Crowther told you?</p> <p>A. That's correct.</p> <p>Q. And so fair to say that when you wrote</p> <p>this in September of 2006, that it appeared that</p> <p>Mr. Crowther was complaining of a chronic problem?</p> <p>A. Yes.</p> <p>Q. And that would include chronic pain in</p> <p>his left thumb?</p> <p>A. Yes.</p> <p>Q. And so it would be fair to say that,</p> <p>when it says that "symptoms have gone on for</p> <p>several years," that would be at least more than</p> <p>two years?</p> <p>A. Yes, probably.</p> <p>Q. So at least it went back to September</p> <p>of 2003 --</p> <p>MR. JOYCE: Objection.</p> <p>Q. (By Mr. Hall) -- based on what he</p> <p>told you?</p> <p>A. I guess so. You know, I don't know</p> <p>what -- I said, "several." I didn't ask him the</p> <p>specific number apparently.</p>
<p style="text-align: right;">Page 27</p> <p>1 Q. Or his deposition?</p> <p>2 A. I don't think I saw any deposition.</p> <p>3 Q. Or any documents that had been</p> <p>4 exchanged between the parties, correct?</p> <p>5 A. Correct.</p> <p>6 Q. Okay. And, I'm sorry, you said that</p> <p>7 you didn't see an ergonomic assessment of his job?</p> <p>8 A. I don't recall having seen one.</p> <p>9 Q. And when he presented with problems in</p> <p>10 his thumb in September -- on September 26th of</p> <p>11 2005 -- and I see that you had written a letter on</p> <p>12 that date to Dr. Baustin. Does that ring a bell</p> <p>13 to you?</p> <p>14 A. I have a copy of it here.</p> <p>15 Q. Okay. And in looking at the letter,</p> <p>16 it's my understanding that you told Dr. Baustin,</p> <p>17 in September of 2005, that Mr. Crowther was</p> <p>18 complaining of pain at the ulnar border of his</p> <p>19 left wrist, pain in the left thumb, intermittent</p> <p>20 episodes of numbness and tingling in the hands,</p> <p>21 with radiation of pain up to the forearms,</p> <p>22 "symptoms have gone on for several years and are</p> <p>23 gradually worsening," is that correct?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">Page 29</p> <p>Q. Certainly more than a year, though,</p> <p>right?</p> <p>A. Yes, I think so. If I said,</p> <p>"several," yes.</p> <p>Q. And at that time, he was doing some</p> <p>supervision, as well as some heavy work. Is that</p> <p>what he told you?</p> <p>A. If that's what I wrote, it's probably</p> <p>based on his telling me that.</p> <p>Q. And when he presented with you at that</p> <p>time, what was the status of the joint in the</p> <p>thumb that was problematic for him?</p> <p>A. It had limited movement. It was</p> <p>tender. And there was x-ray evidence of arthritis</p> <p>of it.</p> <p>Q. And, I'm sorry, I didn't hear the last</p> <p>part of it.</p> <p>A. There was x-ray evidence of it.</p> <p>Q. And in looking at that x-ray, can you</p> <p>tell how long that arthritis was there?</p> <p>A. I don't think you could tell from the</p> <p>x-ray.</p> <p>Q. Was it advanced arthritis?</p> <p>A. My note indicates that it was fairly</p>

<p style="text-align: right;">Page 30</p> <p>1 advanced.</p> <p>2 Q. And if it's fairly advanced, does that</p> <p>3 mean that it's probably been in existence for some</p> <p>4 time?</p> <p>5 A. Sure.</p> <p>6 Q. And would that be consistent with</p> <p>7 having symptoms for several years before he</p> <p>8 presented?</p> <p>9 A. Yes, I think so.</p> <p>10 Q. And I'm not here to suggest that</p> <p>11 there's not such a thing as asymptomatic arthritic</p> <p>12 changes on an x-ray, okay?</p> <p>13 A. Okay.</p> <p>14 Q. But it certainly is consistent with</p> <p>15 having the type of symptoms that he had, based on</p> <p>16 the level or the amount of arthritis that he had?</p> <p>17 A. Yes.</p> <p>18 Q. And I think at that point you said</p> <p>19 that there was some restricted movement. And I</p> <p>20 apologize. Can you tell me, like, what the</p> <p>21 movement was, in terms of the metacarpal</p> <p>22 phalangeal joint? Which joint is that, on your</p> <p>23 thumb?</p> <p>24 A. It's this joint.</p>	<p style="text-align: right;">Page 32</p> <p>based upon my examination, to be normal. So I would assume that his opposite side is the normal one.</p> <p>Q. Okay. And so it was from zero to seventy on the opposite side?</p> <p>A. On the opposite side. That means it got to straight and it bent seventy degrees. And on the injured -- or the side with the arthritis -- it lacked thirty degrees of straightening to neutral, and it flexed to forty-five, which means it had a total arc of fifteen degrees, whereas the other one had a total arc of seventy degrees.</p> <p>Q. Okay. And that's a relatively significant finding, would you agree?</p> <p>A. That's a significant finding.</p> <p>Q. And that development of lack of a range of motion, that's not something that happens overnight, would you agree?</p> <p>A. Well, it --</p> <p>Q. Or can it?</p> <p>A. It can happen overnight, so I -- I don't know for sure, but -- in this instance, I don't know for sure, but I made the presumption, accurate or otherwise, that it had not happened</p>
<p style="text-align: right;">Page 31</p> <p>1 Q. So you're pointing to the back?</p> <p>2 A. Well, it goes through to the front</p> <p>3 also.</p> <p>4 Q. It goes through to the front?</p> <p>5 A. Right.</p> <p>6 Q. Okay. But that's what; at the bottom</p> <p>7 of your thumb; that's the joint we're talking</p> <p>8 about?</p> <p>9 A. "The bottom of the thumb" is a very</p> <p>10 loose term. It will be interpreted by many people</p> <p>11 in different ways, so I wouldn't call it the</p> <p>12 bottom of the thumb. It's the metacarpal</p> <p>13 phalangeal joint.</p> <p>14 Q. And where was the limitation in the</p> <p>15 movement; forward or backwards?</p> <p>16 A. Each way.</p> <p>17 Q. And what's the normal range of motion?</p> <p>18 A. Well, that's a problematic question,</p> <p>19 because it's a joint that has a very wide variety</p> <p>20 of "normal." So what we're always left doing is</p> <p>21 comparing it to the opposite side and assuming</p> <p>22 that that's the normal for that person if it's a</p> <p>23 joint without symptoms and without any evidence of</p> <p>24 arthritis. And his opposite side seemed to me,</p>	<p style="text-align: right;">Page 33</p> <p>overnight.</p> <p>Q. Okay. Well, I certainly -- did you collect a history from Mr. Crowther whether or not he had any traumatic injuries to his thumb?</p> <p>A. I assume that I did. My recollection is that he told me that he had not had a single major injury, a single injury to it.</p> <p>Q. Could that range of motion result from a fall where you might land on your hand?</p> <p>A. It could.</p> <p>Q. And if that happened, is that something that you would be able to see on an x-ray?</p> <p>A. Well, you wouldn't be able to see that it resulted from a fall, and you can't see range of motion on an x-ray.</p> <p>Q. Does the x-ray show any fractures or anything like that?</p> <p>A. I didn't see any.</p> <p>Q. And what's the significance of the tenderness in the region of the joint, if anything?</p> <p>A. It's consistent with his having arthritis in that joint.</p>

<p style="text-align: right;">Page 34</p> <p>1 Q. Was there anything else significant 2 about the first time you saw him? 3 A. I'm not sure what you mean by 4 "significant." There were other findings on the 5 exam. 6 Q. And what were the other findings, 7 generally? 8 A. Well, he had some complaints referable 9 to the ulnar corner of his wrist, but not a lot of 10 abnormality on the examination there. So that's a 11 relatively important negative finding. And he had 12 some complaints, suggestive of a possible 13 diagnosis of carpal tunnel syndrome, but not a lot 14 of hard findings in that respect either. 15 Q. Did you diagnose him with any other 16 disorders? 17 A. I didn't diagnosis him with any other 18 disorders. I wondered about whether he might have 19 any. 20 Q. And so based on his clinical -- your 21 clinical findings from your examination and the 22 testing that you had done, you basically 23 determined that he had an arthritic joint but no 24 other abnormalities?</p>	<p style="text-align: right;">Page 36</p> <p>Do you have a Dr. Pacitti in your office? P-A-C-I-T-T-I. A. Mr. Pacitti, physician assistant. Q. Okay. I'm sorry. He's a physician assistant. I apologize. A. That's okay. Q. And do you recall seeing a notation from December of 2005? A. I recall seeing it previously, yes. Q. And there's a notation; it says, "Pacitti," and then there's a space, and then it has a slash, JWH. Do you know who JWH is? A. She's the transcriptionist. Q. And there's a notation under "Physical Exam," at that point, saying that the thumb MP joint is slightly deformed. Do you see that? A. I do. Q. And do you know what that refers to? A. I'm not sure what you mean by what it refers to. Q. Okay. Well, does he have a congenital deformity? A. No. He just meant it didn't look normal. I mean, I'm assuming. It's not my note.</p>
<p style="text-align: right;">Page 35</p> <p>1 A. Correct. 2 Q. OKay. And on Page 2 of your report, 3 there's another reference to an x-ray of the left 4 wrist; and I think that was "PA and lateral x-ray 5 of the thumb metacarpal phalangeal joint." 6 A. Right. 7 Q. It showed advanced arthritic change 8 with a deviation of the thumb tip in the ulnar 9 direction. 10 A. Correct. 11 Q. And that there were surrounding 12 peripheral osteophytes and marked joint space 13 narrowing, correct? 14 A. Correct. 15 Q. And is that from December of 2005? 16 A. That's from September of 2005. 17 Q. That was the September 2005 x-ray? 18 A. Correct. 19 Q. Do you recall another x-ray being 20 done? 21 A. Well, I know he had x-rays following 22 his surgery. But I don't recall that. 23 Q. And I'm not sure if you reviewed this 24 or not. But let me see if I can find it.</p>	<p style="text-align: right;">Page 37</p> <p>But I'm assuming that he meant that it didn't look normal. Q. Okay. And when you looked -- when you did your x-ray and your diagnostic testing, did you see any deformities, or is that something you would see on an x-ray, where you would see marked deformities? A. Well, this is not referring to the x-ray. This is referring to the examination, his statement. So you might see deformity looking at the thumb itself. You might see deformity looking at the x-ray. I noted deformity looking at the x-ray. I'm not sure that I noted deformity in looking at his thumb. But as I look at my x-ray report, I believe that he must have had deformity of his thumb that would have been visible. Q. And that deformity would be that his thumb would be in a different position than normal? A. It would be tilted a little bit to the side and swollen and thick. Q. Did he have any of those types of issues with any of his other fingers? A. Not that my notes indicate. Not that</p>

<p style="text-align: right;">Page 38</p> <p>1 I recall.</p> <p>2 Q. Do you remember him having a deformity</p> <p>3 in his pinky --</p> <p>4 A. I don't recall it.</p> <p>5 Q. -- that he -- that resulted from a</p> <p>6 fall?</p> <p>7 A. I don't recall. Sorry.</p> <p>8 Q. And it's my understanding that the</p> <p>9 procedure that you had done was an arthrodesis of</p> <p>10 the metacarpal phalangeal left thumb joint?</p> <p>11 A. Correct.</p> <p>12 Q. And can you explain -- and I note that</p> <p>13 there was a discussion of alternatives of the</p> <p>14 cervical or surgical treatment that you were going</p> <p>15 to give him, and that you did an arthrodesis</p> <p>16 instead of an arthroplasty. And I was wondering</p> <p>17 if you could explain the difference and the</p> <p>18 reasoning why you did the arthrodesis, as opposed</p> <p>19 to the arthroplasty?</p> <p>20 A. Well, an arthrodesis is an operation</p> <p>21 to stiffen the joint permanently. Fuse it is the</p> <p>22 common terminology used. It's a very good</p> <p>23 operation for relief of pain. It lasts forever.</p> <p>24 You don't put in implants that may break or pop</p>	<p style="text-align: right;">Page 40</p> <p>Q. And would you agree that Mr. Crowther</p> <p>could go back to work at the Railroad with his</p> <p>thumb condition as it currently exists?</p> <p>A. If it were just his thumb and no other</p> <p>part of his body?</p> <p>Q. Yes, just his thumb.</p> <p>A. I do.</p> <p>Q. And so that would -- you would return</p> <p>him back to heavy work?</p> <p>A. Um-hum.</p> <p>Q. Okay. And, I'm sorry, that was a yes?</p> <p>A. Yes. Sorry.</p> <p>Q. No. That's okay.</p> <p>A. That's a yes.</p> <p>Q. And when is the last time you saw Mr.</p> <p>Crowther, do you recall?</p> <p>A. I think it was April of 2007.</p> <p>Q. And how was he doing at that time?</p> <p>A. I think he was doing fine. His</p> <p>arthrodesis was solidly united.</p> <p>Q. And his prognosis was good?</p> <p>A. Regarding his thumb, I thought his</p> <p>prognosis was good.</p> <p>Q. And based on what you said, the</p>
<p style="text-align: right;">Page 39</p> <p>1 out of place. And if somebody is going to use</p> <p>2 their hands for heavy work, then there's a</p> <p>3 reasonably good chance that it will stand up to</p> <p>4 that.</p> <p>5 An arthroplasty is an operation that</p> <p>6 preserves some movement, not excellent movement in</p> <p>7 the thumb, but some movement. It carries with it</p> <p>8 the drawback that the implant which you put in</p> <p>9 there could break or come out of place. The</p> <p>10 likelihood of that happening is higher if somebody</p> <p>11 uses the hand very aggressively, such as for heavy</p> <p>12 work, like he did.</p> <p>13 Q. Okay. And so when you did the</p> <p>14 surgery, was the anticipated -- or you did the</p> <p>15 arthrodesis -- was it the anticipation that he</p> <p>16 would be going back to work at the Railroad?</p> <p>17 A. Well, I always do it, planning on</p> <p>18 somebody going back to doing what they normally</p> <p>19 do, so I try to choose appropriately.</p> <p>20 Q. Okay. And would you agree that Mr.</p> <p>21 Crowther had a good or excellent result?</p> <p>22 A. From the surgery that I did?</p> <p>23 Q. Yes.</p> <p>24 A. I thought he did.</p>	<p style="text-align: right;">Page 41</p> <p>arthrodesis doesn't ordinarily result in any</p> <p>future surgery, is that right?</p> <p>A. That's correct.</p> <p>Q. And you don't expect any future</p> <p>surgery with regard to Mr. Crowther?</p> <p>A. Regarding his thumb?</p> <p>Q. Regarding his thumb. I'm sorry.</p> <p>A. Correct.</p> <p>Q. You've not treated him for anything</p> <p>else, other than his hand?</p> <p>A. No, I don't believe I have.</p> <p>Q. And are you aware of any scientific</p> <p>literature that has shown that the type of work</p> <p>duties that Mr. Crowther does may cause or</p> <p>contribute to the development of problems in the</p> <p>left metacarpal joint?</p> <p>A. No, not specific literature addressing</p> <p>that.</p> <p>Q. Are you aware of any scientific</p> <p>literature that shows that there are specific</p> <p>changes that could be done to the type of work</p> <p>that Mr. Crowther did, that would prevent him from</p> <p>developing the type of problems he had in his left</p> <p>thumb?</p>

<p style="text-align: right;">Page 42</p> <p>1 A. I'm not.</p> <p>2 Q. Is there any way to prevent the type</p> <p>3 of injury or the type of condition that Mr.</p> <p>4 Crowther had in his left thumb?</p> <p>5 A. Well, I think if none of those factors</p> <p>6 that I mentioned to you before happened to you in</p> <p>7 your lifetime, then you are likely not to get this</p> <p>8 kind of arthritis.</p> <p>9 Q. Could you explain -- well, maybe</p> <p>10 that's a bad word, a bad word choice.</p> <p>11 It's my understanding that, based on</p> <p>12 all the records I've seen anyway, that the problem</p> <p>13 he was having was in his non-dominant left hand,</p> <p>14 is that right?</p> <p>15 A. Yes.</p> <p>16 Q. And he didn't have similar problems in</p> <p>17 his metacarpal joint of his right thumb, correct?</p> <p>18 A. Not that I know of, right.</p> <p>19 Q. And that it's my understanding that,</p> <p>20 unless -- please correct me, if I'm wrong, Tom --</p> <p>21 but he's right-handed, and that's his dominant</p> <p>22 hand?</p> <p>23 A. I think so.</p> <p>24 Q. And does it make any sense why the</p>	<p style="text-align: right;">Page 44</p> <p>that you -- part of your opinion anyway -- was</p> <p>that -- on the addendum anyway -- was that, in</p> <p>terms of this aggravation of the arthritis in his</p> <p>left thumb -- that would you agree that non-work-</p> <p>related hand activity would also aggravate the</p> <p>problem he was having in his left thumb?</p> <p>A. Well, non-related-work -- non-related-</p> <p>work activity did you say?</p> <p>Q. Non-related -- I'm sorry. Non-work-</p> <p>related.</p> <p>A. Non-work-related. That's what you</p> <p>said. Non-work-related activity might make it</p> <p>hurt, but it's -- I believe -- would be much less</p> <p>likely to truly aggravate the underlying problem</p> <p>than heavy use of it. So if his non-work-related</p> <p>activity was doing heavy construction around his</p> <p>home, for example, then I would expect that would</p> <p>not only make it hurt, but also aggravate the</p> <p>basic problem. And if the non-work-related</p> <p>activity was jogging or reading or something like</p> <p>that, then I would expect that it would not</p> <p>aggravate the basic problem.</p> <p>Q. How about, like, chopping wood; would</p> <p>that aggravate it?</p>
<p style="text-align: right;">Page 43</p> <p>1 unilateral versus bilateral?</p> <p>2 A. If you examine -- listen to patients'</p> <p>3 hand-related complaints and examine their hands</p> <p>4 for long enough, you'll learn that lots of things</p> <p>5 are unilateral, not bilateral, even though you do</p> <p>6 the same thing with both hands; that when things</p> <p>7 become bilateral, they don't necessarily do so at</p> <p>8 the same time; and that there is no particular</p> <p>9 predilection for something affecting the dominant</p> <p>10 hand, rather than the non-dominant hand, even</p> <p>11 though common sense might indicate that it should.</p> <p>12 Q. Okay.</p> <p>13 A. With thirty years of being in this</p> <p>14 business, that's how it is.</p> <p>15 Q. Yes, because, you know, there's no</p> <p>16 evidence that he's had any problems with his right</p> <p>17 hand.</p> <p>18 A. Understood.</p> <p>19 Q. And you didn't note any problem with</p> <p>20 his right hand either, correct?</p> <p>21 A. Correct.</p> <p>22 Q. And do you know what type of -- I</p> <p>23 apologize. I think I already asked you that.</p> <p>24 Would you agree with me -- I think</p>	<p style="text-align: right;">Page 45</p> <p>A. Chopping wood, if you do it, you know,</p> <p>once a month for two hours, it would make it hurt,</p> <p>but it probably wouldn't be a true aggravating</p> <p>factor.</p> <p>Q. Okay. How about --</p> <p>A. If you chop wood every day, all day,</p> <p>that's a different story.</p> <p>Q. How about, like, riding a bicycle?</p> <p>A. No, I don't think so.</p> <p>Q. And I apologize if I'm repeating, but</p> <p>in terms of the things that you reviewed, the</p> <p>materials you reviewed, I think we were in</p> <p>agreement that you've not seen any objective</p> <p>scientific change in the arthritis that was</p> <p>contained in his left thumb as a result of his</p> <p>job, is that right; we don't have any objective</p> <p>scientific evidence that the disease process was</p> <p>actually increased due to his work, is that right?</p> <p>A. I think that's correct.</p> <p>Q. If you give me just a minute or two, I</p> <p>want to maybe just go through my notes. And I</p> <p>understand you've got to be out of here in fifteen</p> <p>minutes, so I'm going to try to speed it up.</p> <p>A. Go ahead.</p>

<p style="text-align: right;">Page 46</p> <p>1 Q. I appreciate it. Thank you.</p> <p>2 Okay. I have a quick question. I was</p> <p>3 looking at an October of '06 record and there was</p> <p>4 an x-ray discussed and it talked about advanced</p> <p>5 arthritis which looked to be due to a</p> <p>6 malalignment, secondary to chronic RCL injury.</p> <p>7 A. Yes.</p> <p>8 Q. What's RCL? I'm sorry.</p> <p>9 A. It's the radial collateral ligament.</p> <p>10 Q. Okay. That's what I thought, but I</p> <p>11 was -- just wanted to make sure.</p> <p>12 Would you agree with me, Doctor, that</p> <p>13 arthritis cannot be prevented?</p> <p>14 A. It depends upon how much of a bubble</p> <p>15 you put yourself in, seriously.</p> <p>16 Q. Well, would you agree that if you're</p> <p>17 an active adult, doing normal activities --</p> <p>18 A. The odds are that you're going to get</p> <p>19 arthritis at some point, somewhere in your body.</p> <p>20 Q. And you would agree with me that</p> <p>21 there's not a dose response relationship between</p> <p>22 hand activity and the development of arthritis in</p> <p>23 the joint Mr. Crowther had?</p> <p>24 A. I'm not sure I agree with you</p>	<p style="text-align: right;">Page 48</p> <p>comparison to the right hand --</p> <p>A. Correct.</p> <p>Q. -- in terms of the range of motion;</p> <p>but did you look for arthritic changes in the</p> <p>other hand, as well?</p> <p>A. I would have been looking for that.</p> <p>Q. And in terms of his job duty, was</p> <p>there anything in particular that you thought was</p> <p>problematic, in terms of his hand use</p> <p>specifically, causing a problem in terms of his</p> <p>symptoms or aggravation as you've stated? because</p> <p>I understand you've not given a causation opinion,</p> <p>but you've said there's an aggravation of some</p> <p>sort.</p> <p>A. Right.</p> <p>Q. What was it specifically about his job</p> <p>that aggravated his thumb?</p> <p>A. Well, the nature of gripping large</p> <p>heavy objects is you have to wrap your thumb</p> <p>around it. And so if you haven't -- and that</p> <p>joint, his arthritic metacarpal phalangeal joint,</p> <p>will make contact with any large handle. That's</p> <p>how you're -- that's how your hand grips</p> <p>something. It always makes contact there. So a</p>
<p style="text-align: right;">Page 47</p> <p>1 entirely. I think, you know, that at some point,</p> <p>2 that the lack of a dose response relationship --</p> <p>3 can you hear me? Okay. -- the lack of a dose</p> <p>4 response relationship breaks down if the dose is</p> <p>5 too large. So it's speculation for me to say that</p> <p>6 there's no relationship between the two.</p> <p>7 Q. And in terms of Mr. Crowther, we don't</p> <p>8 know -- and the type of things that he did -- we</p> <p>9 don't have a dose response relationship; would you</p> <p>10 agree with that?</p> <p>11 A. Yes. I don't anyway, but --</p> <p>12 Q. I'm sorry. You said you don't have a</p> <p>13 dose --</p> <p>14 A. I do not.</p> <p>15 Q. And did he have any arthritis in any</p> <p>16 other joints in his thumb or his fingers?</p> <p>17 A. Not that I noted in my office records.</p> <p>18 Q. Okay. Did you examine --</p> <p>19 A. My normal examination would be all of</p> <p>20 the joints from his elbows down. That's my</p> <p>21 standard.</p> <p>22 Q. And then I know that in terms of --</p> <p>23 A. Including all the joints of the thumb.</p> <p>24 Q. And my understanding is that you did a</p>	<p style="text-align: right;">Page 49</p> <p>large handle, for example, would be the handle of</p> <p>a sledgehammer, that he would make contact with,</p> <p>and that might be a problematic thing for him to</p> <p>do. A large handle might be the handle on a big</p> <p>pair of pliers, or maybe large wrenches.</p> <p>Q. And it's those things that you think</p> <p>aggravated his pre-existing condition?</p> <p>A. I think so.</p> <p>Q. And was there anything the Railroad</p> <p>could have done to prevent him from aggravating</p> <p>it; I mean, what could they have done, in your</p> <p>estimation?</p> <p>MR. JOYCE: Objection. He's not here</p> <p>as our ergonomic expert; he's here as a</p> <p>medical expert, so I think that opinion is</p> <p>outside the scope of his testimony. It's a</p> <p>negligence question.</p> <p>Q. (By Mr. Hall) Are there any specific</p> <p>changes that the Railroad could have made in his</p> <p>job, that could have prevented him from having an</p> <p>aggravation, as you've described it?</p> <p>A. I guess not having him used those</p> <p>tools.</p> <p>Q. So anything that would have him</p>

<p style="text-align: right;">Page 50</p> <p>1 touching a tool or gripping a tool would be 2 problematic for him?</p> <p>3 A. I'm not sure "anything." But 4 repetitive use of -- pounding with heavy tools 5 with big handles that he would need to use would 6 tend to aggravate it.</p> <p>7 Q. And when you saw him in 2005, did you 8 put any work restrictions on Mr. Crowther?</p> <p>9 A. I don't recall putting any work 10 restrictions on him.</p> <p>11 Q. Are there any work restrictions in 12 your file? because I've not seen any, but --</p> <p>13 A. If you haven't, then I -- then there 14 probably aren't. But I don't recall any specific 15 work restriction.</p> <p>16 Q. And you reviewed your records in 17 advance of your deposition, right?</p> <p>18 A. Well, I reviewed these records which 19 are my narrative notes. I did.</p> <p>20 Q. Okay. And so no one else would have 21 put him on a work restriction --</p> <p>22 A. No.</p> <p>23 Q. -- someone other than you, right?</p> <p>24 A. I or the physician assistant who was</p>	<p style="text-align: right;">Page 52</p> <p>problem at work, is that something that you would have written down in a notation to give him on, like, a medical pad?</p> <p>A. Well, we have forms for that.</p> <p>Q. Okay. You have forms for that?</p> <p>A. And they're generally copied into the record.</p> <p>Q. And there's no form that's in the record?</p> <p>A. Not that I've seen.</p> <p>Q. And if you do find one, would you let Mr. Joyce know so that I can have it? because I've not seen it.</p> <p>A. Absolutely.</p> <p>Q. And, you know, I just want to make sure. But as you sit here today, it's fair to say that you didn't place him on any work restrictions in 2005 or 2006, with regard to gripping or using tools, is that correct?</p> <p>A. I think that's correct.</p> <p>Q. And as you sit here today, you're unaware of whether or not you warned Mr. Crowther that his gripping of tools or use of tools could aggravate his condition, is that correct?</p>
<p style="text-align: right;">Page 51</p> <p>1 working, helping me take care of him.</p> <p>2 Q. And you reviewed all of those things?</p> <p>3 A. I did.</p> <p>4 Q. And so when you -- he worked past 5 2005. I think his last day of work was in '07. 6 And so that time period while you were treating 7 him, other than while he was in surgical care, 8 there were no work restrictions from you?</p> <p>9 A. I think that that's correct.</p> <p>10 Q. And you didn't write a letter to the 11 Railroad, or to anyone at the Railroad, indicating 12 that Mr. Crowther would have a problem grasping or 13 handling tools, is that fair to say?</p> <p>14 A. I think that's probably accurate. But 15 I'm not certain.</p> <p>16 Q. And if you would have told Mr. 17 Crowther to avoid -- did you tell Mr. Crowther to 18 avoid using those things because it might 19 aggravate his condition?</p> <p>20 A. I don't recall telling him that.</p> <p>21 Q. If you did tell him that, would there 22 be a record of it?</p> <p>23 A. There probably would be.</p> <p>24 Q. Okay. And if he was going to have a</p>	<p style="text-align: right;">Page 53</p> <p>A. Correct.</p> <p>Q. And as you sit here today, you don't have any information where Mr. Crowther or you put the Railroad on notice of that?</p> <p>A. I think that's correct.</p> <p>Q. As a matter of fact, even after his surgery there's not a work restriction because you returned him to work, isn't that right?</p> <p>A. Correct.</p> <p>Q. And did you meet with Mr. Joyce before your deposition today?</p> <p>A. I did.</p> <p>Q. And can you tell me what you guys discussed?</p> <p>A. Mr. Joyce asked me about the addendum, and asked me, I think, if that was effectively a representation of my opinion about his aggravation, and mentioned -- Mr. Joyce mentioned to me that I had wondered about the possibility of carpal tunnel syndrome, but, with testing, had not substantiated it. That was about it.</p> <p>Q. And so as far as you were concerned, he didn't have carpal tunnel syndrome?</p> <p>A. In the end, that's correct.</p>

<p style="text-align: right;">Page 54</p> <p>1 Q. And what's your understanding of what 2 his problem was; was it a nerve impingement in the 3 neck? 4 A. I think so. 5 Q. And that's a subject for Dr. Cowan? 6 A. Yes. 7 Q. And did you discuss anything else? 8 A. I don't think. But I would defer to 9 Mr. Joyce. But I don't remember discussing 10 anything else. 11 Q. And, you know, if you think of 12 anything else, or you recall anything else about 13 Mr. Crowther's job duties, or your opinions 14 changing in any way, would you please let Mr. 15 Joyce know so that he could let me know? 16 A. I will. 17 Q. And if you find any further 18 documentation with regard to the work restriction, 19 which I don't think there is one, but I'd 20 certainly appreciate a copy of that; and I would 21 like to talk to you about it, if that does exist, 22 later on, okay? 23 A. Yes. 24 MR. HALL: With that, I don't think I</p>	<p style="text-align: right;">Page 56</p> <p>return to such heavy labor. I would be inclined to not permit it. I told him that today." Q. So your -- and that was as of April of '07? A. Right. Q. So your discussion with Jeff was not focused on his thumb; it was really his total orthopedic picture with regard to his neck and his knees, as well? A. Yes, his total orthopedic status. And I should -- that reminds me that Mr. Joyce asked me about that when we were in the other room. Q. Okay. And just lastly, am I correct that your opinion is that Geoff's job as a trackman aggravated and worsened his thumb arthritis? A. That's correct. MR. JOYCE: That's all I have. Thank you. MR. HALL: Just to follow-up real quick. EXAMINATION Q. (By Mr. Hall) But in terms of -- you would agree that for his knees and for his neck,</p>
<p style="text-align: right;">Page 55</p> <p>1 have any further questions. 2 MR. JOYCE: Just real briefly. 3 EXAMINATION 4 Q. (By Mr. Joyce) Dr. Wenner, do you 5 have your April 13, 2007 note? 6 A. I think I do, yes. 7 Q. Is that the last time you saw Jeff in 8 conjunction with his thumb problem? 9 A. I believe it is. 10 Q. It looks like you did have some sort 11 of discussion about his ability to return to work. 12 I'm looking at that third paragraph. It looks 13 like you had a discussion about what he did. 14 A. Yes. 15 Q. And it looks like at least there was 16 some sort of a conversation. Maybe you can read 17 to me what you told him about his return to work. 18 A. My note says, "He has previously 19 undergone an anterior cervical arthrodesis" -- two 20 levels is what that means -- "arthrodesis of the 21 left thumb MPJ and is soon to have a TKR," meaning 22 total knee replacement. "It seems to me that he's 23 had too much orthopedic breakdown, multiple bone 24 and joint problems, to make it sensible for him to</p>	<p style="text-align: right;">Page 57</p> <p>you didn't treat him, right? A. That's correct. Q. And your expertise is in the thumb, correct? A. That's correct. Q. And you didn't do a disability rating at all? A. I did not. Q. And were you aware, at least for the knees, that he got the best possible disability rating? A. I wasn't aware of it, until you just told me now. Q. And -- A. What does "best" mean? Most disabled? Q. No. On the AMA guidelines, he had the best possible result, in terms of disability. A. Okay. Q. Okay? I'm sorry. So that's what I meant by that. And your opinion hasn't changed, from what you just told me, that it's not his left thumb that's keeping him out of work, correct? A. Well, his left thumb contributes to it, as part of multiple things. What I said</p>

<p style="text-align: right;">Page 58</p> <p>1 before is: If it was just his thumb, I thought he 2 could work.</p> <p>3 Q. And even with the other orthopedic 4 complaints that he has, would it be fair to say 5 that he could do a light, sedentary-type job?</p> <p>6 A. Sedentary-type job. I think so.</p> <p>7 Q. A light-duty job?</p> <p>8 A. It depends upon what "light duty" 9 means.</p> <p>10 Q. I mean somebody who's like a 11 supervisor, you know, at a manufacturing plant, or 12 something like that is, you know --</p> <p>13 A. Not handling tools?</p> <p>14 Q. Yes. But who is doing --</p> <p>15 A. Not having to walk around on concrete 16 all day? because you can't do that with total 17 knees I don't think.</p> <p>18 Q. Well, I'll leave that to Dr. Lehman?</p> <p>19 A. But you're asking me my opinion about 20 whether he can return to work, and I've already 21 said that if it's just his thumb, he can return to 22 even heavy work. So if I'm -- I've answered that 23 part of it. So he can certainly return to light 24 work with his thumb.</p>	<p style="text-align: right;">Page 60</p> <p style="text-align: center;">CERTIFICATE OF REPORTER</p> <p>I, Jonathan P. Lodi, a Notary Public in and for the Commonwealth of Massachusetts, do hereby certify that STEVEN M. WENNER, M.D., came before me on December 15, 2008, at New England Orthopedic Surgeons, 300 Birnie Avenue, Springfield, Massachusetts, and was by me duly sworn to testify to the truth and nothing but the truth as to his knowledge touching and concerning the matters in controversy in this cause; that he was thereupon examined upon his oath and said examination reduced to writing by me; and that the statement is a true record of the testimony given by the witness, to the best of my knowledge and ability?</p> <p>I further certify that I am not a relative or employee of counsel/attorney for any of the parties, nor a relative or employee of such parties, nor am I financially interested in the outcome of the action.</p> <p>WITNESS MY HAND this day of , 2008.</p> <p>Jonathan P. Lodi My Commission Expires: Notary Public 8/8/14</p>
<p style="text-align: right;">Page 59</p> <p>1 Q. And in terms of his other orthopedic 2 conditions, in relationship to what you've just 3 talked with Mr. Joyce about, you would agree that 4 he could go back to some lighter, sedentary-type 5 job?</p> <p>6 A. Yes, I think so.</p> <p>7 Q. And is that something you would 8 encourage your patients to do, is to go back to 9 doing some type of gainful employment?</p> <p>10 A. I do.</p> <p>11 Q. And remaining active is a good thing?</p> <p>12 A. I do (sic.)</p> <p>13 Q. And are you aware of whether or not 14 Mr. Crowther is looking for a job or looking for 15 some type of employment?</p> <p>16 A. I don't know.</p> <p>17 Q. But you wouldn't have any problem with 18 him doing a lighter, medium or -- I'm sorry -- 19 lighter, sedentary-type job?</p> <p>20 A. That's correct.</p> <p>21 MR. HALL: That's all the questions I 22 have. 23 (Deposition concluded at 6:33 p.m.) 24</p>	